

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
PROPOSED ADMINISTRATIVE ORDER
(NOT A FINAL ORDER)

In the Matter of Novy Oil and Gas, Inc., Respondent
Docket No. SDWA-06-2017-1112

FILED

RECEIVED REGIONAL OFFICE
EPA REGION 6

STATUTORY AUTHORITY

The following findings are made and Administrative Order ("Order") issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("the Act"), 42 U.S.C. §§ 300h-2(c). The authority to issue this Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Compliance Assurance and Enforcement Division. The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(e) of the Act, 42 U.S.C. § 300h-1(e), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

FINDINGS

1. Novy Resources Oil and Gas, Inc. ("Respondent") is a company doing business in the State of Oklahoma and, therefore, is a "person," within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all times relevant to the violations alleged herein, Respondent operated injection wells which are Class II wells (collectively, "the wells") authorized to inject in the Mississippi Chat formation located in Osage County, Oklahoma, as described below:

Well Inventory	Location			Hereinafter
No.	No.	Quarter	Section Township	Referred to as
15	OS5258	Northwest	18 27 North	8 East
				"Well No. 15"

3. Respondent is subject to underground injection control ("UIC") program requirements set forth at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except authorized by a permit issued under the UIC program. The construction or operation of any well required to have a permit is prohibited until the permit has been issued. The term "permit" is defined at 40 C.F.R. § 147.2902.

5. Regulations at 40 C.F.R. § 147.2916 require the owner or operator of a new Class II injection well, or any other Class II well required to have a permit in the Osage Mineral Reserve, to comply with the requirements of 40 C.F.R. §§ 147.2903, 147.2907, and 147.2918 through 147.2928.

6. Regulations at 40 CFR § 147.2920(d), require that permitted injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume

and pressure or shut-in, until the failure has been identified and corrected.

7. On November 19, 1987, EPA issued UIC permit number 06OS1261P5258 ("permit") to Well No. 15.

8. On August 16, 2016, EPA initially observed contamination in a tributary of North Bird Creek ("tributary") and North Bird Creek. Water located in the tributary at Latitude 36.8322 N and Longitude -96.4984 W, measured over 80,000 parts-per-million (ppm) Total Dissolved Solids (TDS). Also residual oil was observed on the surface and along the banks of the creek. These observations are consistent with impacts associated with oil and gas operations. Since then, EPA has conducted at least 20 inspections and has observed continued contamination.

9. On October 5, 2016 and June 27 - 29, 2017, samples were collected for cation/anion analyses in order to help identify the source(s) of contamination. Grab samples were taken at certain locations including the following: several locations throughout the tributary and North Bird Creek; and Novy Oil and Gas, Inc. well 15. Cation/anion analyses of the samples show a correlation between the tributary samples and produced fluids from this well. In addition, EPA noted elevated temperatures at the bottom of the water column of the tributary and North Bird Creek.

10. On May 25, 2017, in-stream fluid monitoring began in the tributary and North Bird Creek. In-stream monitors were placed in the tributary at ten different monitoring locations measuring the levels of TDS and temperature in the tributary and North Bird Creek.

11. Based on data from in-stream monitors, several stations continue to show elevated TDS and temperature levels. The patterns of TDS and temperature readings, the quick rebound of TDS and temperature levels to pre-event levels after precipitation events, and cyclical variations seen in the data indicate that the presence of these elevated TDS and elevated temperature are consistent with oil field related activities.

12. From June 9 - 20, 2017, a coordinated "static shut-in" of the six closest injection wells in the area occurred which included Respondent's well 15. The following are the observations which resulted from the shut-in:

(a) Due to the measured static fluids being 500 - 750 feet below ground surface, the static fluids cannot migrate from depth to the surface without additional pressure buildup, which was provided by the injection operations.

(b) A correlation was seen between injection operations and in-stream water quality TDS before and after the coordinated shut-in event.

(c) Amplitude (degree of variability) of short term concentration fluctuations at some stations diminished during the shut-in period.

13. From EPA investigations including those discussed in paragraphs 8 through 12 of this Order, EPA has made the determination that injected fluids from Respondent's wells are no longer confined to the authorized injection zone.

14. Therefore, Respondent violated regulations at 40 C.F.R. 147.2920(d) by exhibiting failure to confine injected fluids to the authorized injection zone.

SECTION 1423(c) COMPLIANCE ORDER

15. Based on the foregoing findings, and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby orders Respondent to:

Immediately shut-in and/or shut-down and disconnect injection pipelines from the wellhead for Well 15 until the Respondent can prove that the injected fluids are being confined to the authorized injection zone.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING ON THIS PROPOSED ORDER

16. Respondent may request a hearing to contest the issuance of this Section 1423(c) Proposed Order, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). A request to a hearing must be submitted to the Regional Hearing Clerk (6RC-D); U.S. EPA, Region 6; 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202 within thirty (30) days of the date of receipt of this Proposed Order. Such hearing shall not be subject to Section 554 or 556 of the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, but shall provide a reasonable opportunity to be heard and to present evidence.

17. A Respondent who wishes to request a hearing should include the request in a timely response to this Proposed Order. Respondent must file a timely response in order to preserve the right to a hearing or to pursue other relief.

18. EPA has notified the public of the filing of this Proposed Order at www.epa.gov/publicnotices and has afforded the public thirty (30) days in which to comment on the Proposed Order as required by Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B). At the expiration of the notice period, EPA will consider any comments filed by the public.

19. Should a hearing be requested, members of the public who commented on the issuance of this Proposed Order during the public comment period would have a right to be heard and present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).

GENERAL PROVISIONS

20. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Parts 144, 146, and 147, Subpart III, which remain in full force and effect.

21. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

22. Violation of the terms of this Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

SETTLEMENT OF THIS PROPOSED ORDER

23. EPA encourages all parties against whom an administrative order is proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Proposed Order, please contact Ms. Ellen Chang-Vaughan at (214) 665-7328.

24. If this action is settled without a formal hearing, it will be concluded by issuance of a Final Order.

EFFECTIVE DATE

25. This Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

August 4, 2017
Date

[Signature]

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Proposed Administrative Order was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail
return receipt requested: Michael Novy
Novy Oil and Gas, Inc.
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The Corporation Company
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Copy by email: Jann Hayman, Director
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Dated: 8/7/17 